

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MAURICE LACEY,

Plaintiff,

v.

No. CIV 09-1152 MV/LAM

ROD CALDWELL, FOOD SERVICE DIRECTOR, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

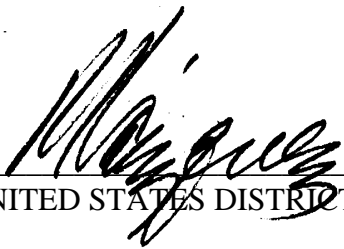
This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), to review Plaintiff's amended complaint (Doc. 3). Plaintiff is incarcerated, appearing pro se, and proceeding in forma pauperis. For the reasons below, the Court will dismiss the amended complaint.

The amended complaint reiterates claims raised in the original complaint, and additionally alleges that Plaintiff has been denied adequate treatment for a serious medical condition. Specifically, Plaintiff's new allegations are that he has been seen repeatedly by medical staff and tested for cancer. He does not allege that he has actually been diagnosed with cancer. He has been given certain medications, but no cancer treatments have been ordered. Plaintiff contends that Defendants' actions violate his rights under the Eighth and Fourteenth Amendments. The complaint seeks damages and injunctive relief.

Plaintiff's allegations in the amended complaint do not implicate constitutional protections. "[Plaintiff] merely disagrees with medical staff about the course of his treatment. This disagreement does not give rise to a claim for deliberate indifference to serious medical needs." *Free v. Unknown Officers of the Bureau of Prisons*, 103 F. App'x 334, 337 (10th Cir. 2004); and *cf. Self v. Crum*, 439

F.3d 1227, 1235 (10th Cir. 2006) (“a reasonable jury could not infer conscious disregard either from [Defendant]’s missed diagnosis or . . . failure to conduct further testing.”). Plaintiff’s allegations fail to support claims for relief, and the Court will dismiss the amended complaint.

IT IS THEREFORE ORDERED that Plaintiff’s amended complaint (Doc. 3) is DISMISSED with prejudice.


UNITED STATES DISTRICT JUDGE